



Attorney Docket No. 19641.01

Confirmation No. 4215

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE *PATENT* APPLICATION OF:

APPLICANT : PHILIP WOLFSON

APPL. NO. : 10/014,909

ART UNIT : 1651

FILED : DECEMBER 14, 2001

EXAMINER: D.K. WARE

TITLE : HERBAL COMPOSITION FOR IMPROVING ORAL HYGIENE...AND
METHODS OF USING SAME

BOX RESPONSE
ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, DC 20231

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RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In the Office Action dated April 4, 2003 (Paper No. 3), the Examiner required restriction under 35 U.S.C. § 121 prior to an examination on the merits of the above-identified application. The separate inventions identified by the Examiner are as follows:

- I. Claims 1-29, drawn to a herbal composition.
- II. Claims 30-40, drawn to a method of using the herbal composition.

The Examiner states that the inventions of Groups I and II are related as product and method of use. In order to establish that the separate inventions are distinct, the Examiner asserts that the product of Group I can be used in a materially different process, such as a pesticide or as a local anesthesia, for example.

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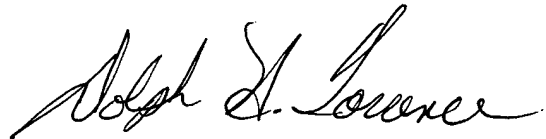
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Consonant with the Examiner's requirement, Applicant provisionally elects with traverse for further prosecution the product defined by Claims 1-29 (designated as Group I).

Notwithstanding the propriety of the restriction requirement for examination purposes, it should be pointed out that such a requirement is discretionary on the part of the Examiner. Further, the exemplary use suggested by the Examiner does not represent "a materially different" method of using Applicant's product and therefore does not meet the criteria for distinctness as set forth in MPEP 806.05(h). Moreover, it would appear that a search and examination of the entire application can be conducted without a serious burden on the Office.

Therefore, it is respectfully requested that the Examiner withdraw the restriction requirement and issue an action on the merits of the claimed embodiments presently in the application. Alternatively, should the Examiner maintain the requirement, Applicant awaits a complete action on the merits of the elected subject matter.

Respectfully submitted,



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DHT:RCL